

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1469 of 1997

with

CRIMINAL MISC.APPLICATION No 6666 of 1997

with

Criminal Misc. Application No.6931 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?No

2.

JJJ

No

3. Whether Their Lordships wish to see the fair copy of the judgement?

No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?

No

TIMS CHANDRAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1469 of 1997

& Criminal Misc. Application No.6931 of 1997

MR A.H. Mehta, for, Mr.PR NANAVATI for Petitioner

Mr.M.A. Patel, APP, for Respondent No. 1

MR Manoj Popat for Respondent No. 2

2. Criminal Misc.ApplicationNo 6666 of 1997

MR BM MANGUKIYA for Petitioner

M.A. Patel, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 19/12/97

ORAL JUDGEMENT

Special Criminal Application No.1469 of 1997 is filed by petitioner, Tims Chandran, under Article 226 of the Constitution of India, and Section 482 of the Code of Criminal Procedure ('Code' for short), for quashing the complaint, registered at Naranpura Police Station, being C.R. No.I-658 of 1997, for the offences punishable under Section 363, 366 and 114 of the Indian Penal Code. Criminal Misc. Application No.6666 of 1997 is filed by Pragnesh Mahendrabhai Patel and Mahendrabhai Patel, under Section 482 of the Code for quashing the complaint, registered at Naranpura Police Station, being C.R. No.I-658 of 1997, for the offences stated above.

The brief facts giving rise to the present litigation are as under:

Respondent No.2, Dinesh Hiralal Mistri, is serving as Assistant Director, in the Income-tax Department, Ahmedabad. He is residing at 320, Pragatinager, Naranpura, along with his wife, two sons and daughter, Misa, aged 17 years old, who is studying in the first year in a college. Minor girl, Misa, was found missing on October 28, 1997 from the lawful guardianship of respondent No.2. He, therefore, lodged complaint on October 28, 1997 before the Naranpura Police Station against the petitioner and other four persons. A habeas corpus petition, being Special Criminal Application No.1452 of 1997, came to be filed in this Court by respondent No.2 against petitioner, Tims, his parents, petitioners Nos. 1 and 2 of Criminal Misc. Application No.6666 of 1997, State of Gujarat, the Police Commissioner, Ahmedabad, and the Police Inspector, Naranpura Police Station, wherein, this Court (Coram: S.D. Pandit, J.), has passed the following order on October 31, 1997;

"Notice returnable on November 3, 1997. Mr. P.B. Bhatt, APP, waives service on behalf of respondent-State. Respondent No.3 is directed to produce Misa, daughter of petitioner, before this Court, on 3.11.1997, at 12 noon. Notices of other respondents be sent through respondent No.3. Petitioner to carry the packet containing the notice of other respondents and hand over the packets to respondent No.3 for being sent to other respondents."

On November 3, 1997, this Court (Coram: S.D. Pandit, J.), passed the following order:

" The learned advocate for the petitioner states that the daughter of the petitioner has been kidnapped and he has lodged First Information Report (F.I.R.) and he has mentioned in the F.I.R. that the son of respondents nos. 6 and 7 has kidnapped his daughter and respondent No.4 and his friends have gone away with two vehicles (1) Sumo bearing Regn. No.. GJI/18A/5954 and (2) Maruti Zen bearing Reg. No.GJ/1/AP/475. Mr. P.R. Nanavati learned advocate for the respondents nos 6 and 7 has also stated before me that these two vehicles are missing. He also states that respondent No.4 is also missing along with his Maruti Zen bearing Regn. No.GJ/1/AP/475. When the Investigating Officer is asked whether he had given any intimation about these two missing vehicles to the police officials of adjoining States of Maharashtra, Rajasthan, M.P. and Karnataka, he states that he had given intimation only to the check posts of Gujarat State. This clearly shows the utmost negligence on the part of the investigating officer. The investigating officer was also informed by the respondent No.6 that he has received a fax message from Kerala State which indicates that the daughter of the petitioner is in Kerala State now but in spite of getting this information, the investigating officer has not informed the police officials of Kerala State about the said missing vehicles of Maruti Zen bearing Regn. No.GJ/1/AP/475 and Sumo bearing Regn. No.GJ/1/18A/5954. The investigating officer is therefore, directed to file a detailed affidavit to show as to why action should not be taken against him for his negligence and dereliction in performance of his duties. It seems that the investigating officer is only getting the information from the first informant as well as from respondent No.6 and on their information he would act. He does not want to work on his own. This is a clear indication of negligence and dereliction towards his duties and, therefore, it is necessary to get his explanation as to why action should not be taken against him. The investigating officer-respondent No.3 states that respondents nos. 5 and 8 could not be served as they are not traceable. He, should, therefore, take appropriate steps to serve them. In case if any information is received that they are absconding, he should take appropriate steps for taking necessary action against them. The investigating officer respondent No.3 is directed to file a detailed report on affidavit about the investigation carried out by him and he should produce

the daughter of the petitioner before this Court on 12.11.1997 at 11.00 a.m. Affidavit filed by respondent No.6 be taken on record.

S.O. to 12.11.1997."

In pursuance of the order dated November 3, 1997, passed by this Court, minor girl, Misa, was produced before a Division Bench of this Court (Coram: R.K. Abichandani & K.R. Vyas, JJ.). The Division Bench asserted the wish of minor girl, Misa. She expressed her desire that she wanted to go with the boy. She reiterated that she had gone with respondent No.4, (i.e., petitioner herein, Tims) out of her own will. However, looking to the age of the girl, the Division Bench observed as under:

"We gathered an impression that the minor girl, Misa, is at present carried away by her new found emotional attachment and we do not find any valid reason for doubting the parents and we feel that her welfare will be best served if she is allowed to remain with her parents."

Thus, the custody of minor girl, Misa, was handed over to her parents. The Division Bench, vide its order dated November 11, 1997, disposed of Special Criminal Application No.1452 of 1997.

Respondent No.2, after missing of minor girl, Misa, has lodged complaint before Naranpura Police Station on October 28, 1997, which is produced at Annexure "A" to Special Criminal Application No.1469 of 1997. As per the case of the complainant, respondent no.2 herein, on October 26, 1997, at about 6 p.m., the petitioner along with one Nikhil had come to the house of respondent No.2 under the pretext of buying diamond, and handed over a cheque of Rs.7000/-, as Nicoline, son of respondent No.2, was doing business of diamond. It is further stated in the complaint that on October 27, 1997, at about 10 p.m., petitioner, Tims, along with one Mustaq, Sailesh, Pragnesh Mahendrabhai Patel (petitioner of Criminal Misc. Application No.6666 of 1997) had come to the house of respondent No.2. A boy, named, Mustaq told the complainant that the petitioner, Tims, wants to marry Misa. The complainant rejected the said marriage proposal. On hearing this reply, all the four persons had threatened the complainant (respondent No.2) with dire consequences and thereafter they had left the house of the complainant. It is further the case of the

complainant that on October 28, 1997, at about 9 a.m. when his daughter Misa was drying clothes near his house, Mustaq along with one Aman, resident of Dariapur locality, came to the house of the complainant and told him that they have persuaded petitioner, Tims, and they apologised for what had happened on the previous day. In the mean time, in a Tata Sumo, bearing Registration No. GJ-8-9945, petitioner, Tims, and Pragnesh, who is petitioner no.1 of Criminal Misc. Application No.6666 of 1997, came to the house of the complainant and apologized. During that period, the complainant found that his daughter, Misa, who was drying clothes near his house, was missing. Tims and Pragnesh, who were present at the house of the complainant, made a show of searching Misa and took the son of the complainant, Nicoline, along with them. As per the allegation made in the complaint, the son of the complainant was thrown out of the car. On return, Nicoline informed the complainant that Misa was not found,, and Tims and Pragnesh had run away after throwing him out of the car. It is specifically alleged in the complaint that daughter, Misa, was found missing on October 28, 1997 between 10 a.m. and 11 a.m. It is alleged in the complaint that petitioner, Tims, with the help of four persons named above, by inducement, had kidnapped minor daughter of the complainant, Misa, without his consent, from his lawful guardianship. The said complaint was registered by the Police Sub-Inspector, Naranpura Police Station, being C.R. No.I-658 of 1997, for the offences punishable under Section 363, 366 and 114 of the Indian Penal Code.

Petitioner, Tims, filed Special Criminal Application No.1469 of 1997 on November 12, 1997, for quashing the complaint, which is registered at C.R. No.I-658 of 1997, at Naranpura Police Station, and with the further prayer to stay the investigation by Naranpura Police Station in connection with the said complaint. The abovesaid Special Criminal Application came up for admission/hearing before this Court (Coram: M.S. Parikh, J.), on November 13, 1997, when the following order was passed.

" Leave to join complainant as party-respondent No.2, and place copy of the order passed in Misc. Criminal Application No.3706 of 1997 on the record of this petition.

Notice returnable on November 21, 1997. Service of notice is waived by Mr. R.M.Chauhan, learned APP, for respondent No.1. There shall be stay of further investigation till then.

D.S. permitted."

Respondent No.2, father of minor girl, Misa, has filed affidavit-in-reply inter alia, contending that the petitioner had kidnapped Misa with the help of four other persons under intimidation, and she was forced to give false statement before the Division Bench which heard Special Criminal Application No.1452 of 1997. It is further averred by respondent No.2 in his affidavit that Misa had given statement as per the tutoring of petitioner, Tims, and she had given her statement under pressure. It is further averred that Misa had addressed a letter to the Commissioner of Police, Ahmedabad, on November 13, 1997, narrating the true version about her kidnapping by petitioner, Tims, and four other persons named in the first information report. Along with the affidavit, respondent No.2 produced copy of the letter-cum-statement which was addressed to the Commissioner of Police, Ahmedabad, by minor girl, Misa.

Learned counsel for the petitioner, Mr. A.H. Mehta, submitted that the first information report does not disclose the ingredients for the offence of kidnapping as defined under Sections 361 of the Indian Penal Code. In this connection, the learned counsel for the petitioner invited my attention to Section 361 of the Indian Penal Code, which reads as under:

"361. Kidnapping from lawful guardianship.- Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.- The words 'lawful guardian' in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.- This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

It is submitted by the learned counsel for the petitioner that girl, Misa, was not kidnapped by the petitioner and she had on her own free will gone with the petitioner. It is further submitted that there is no enticement and,

therefore, ingredients of Section 361 would not be attracted to the facts of the present case. It is further the submission of the learned counsel for the petitioner that girl, Misa, had made voluntary statement before the Division Bench of this Court, which heard Special Criminal Application No. 1452 of 1997, wherein she had categorically stated that she had gone with the petitioner on her free will. The learned counsel for the petitioner has also submitted that the letter-cum-statement of girl, Misa, dated November 13, 1997, which was addressed to the Commissioner of Police, Ahmedabad, was an after thought and was made at the behest of the father, respondent No.2 herein. It is further submitted by the learned counsel for the petitioner that this is a fit case wherein this court should exercise its inherent powers under Section 482 of the Code and should quash the proceedings in the facts and circumstances of the case.

On the other hand, it is submitted by the learned Additional Public Prosecutor that the police is investigating cognizable offence and the court should not interfere at this stage, when the true facts are not forthcoming during investigation. It is further submitted by the learned Additional Public Prosecutor that when the investigation is at the initial stage, the court should not interfere. The learned Additional Public Prosecutor has further submitted that unless investigation is completed, it cannot be stated that the petitioner and other accused persons are not involved in the offences for which the complaint is registered.

Submission of the learned counsel for the petitioner that statement of girl, Misa, before the Division Bench hearing Special Criminal Application No.1452 of 1997, wherein, she had stated that she had gone with the petitioner on her free will, should be taken into account and the court should come to the conclusion that the ingredients of section 361 of the Indian Penal Code are missing in the present case, is devoid of any merit. At the stage of quashing a complaint, only the court is required to see the allegations made in the complaint to find out whether any offence is made out. In the complaint, it is specifically mentioned that, when respondent No.2, who is the father of minor daughter, Misa, had rejected the proposal of marriage, Misa was kidnapped with the help of four other persons. In the present case, minor girl Misa was in the lawful guardianship of respondent No.2 and, without his consent, minor girl Misa was kidnapped from

the lawful guardianship of the complainant and, therefore, in my opinion, the ingredients of Section 361 are fully attracted to the facts of the present case.

Submission of the learned counsel for the petitioner that minor girl Misa was not kidnapped and had gone on her own free will with the petitioner, and stayed with him for about 15 days without any hue and cry, is also devoid of any merit. The learned counsel for the petitioner, in support of his submission, has relied upon the decision of the Supreme Court in the case of Varadarajan vs. State of Madras, reported in AIR 1965 Supreme Court 942. It is submitted that, as per the law laid down by the Supreme Court in the aforesaid case, the ingredients of taking and enticing of minor girl, Misa, are not attracted in the facts of the present case. In the case of Varadarajan (supra), the minor girl had left her guardian's house, joined the accused, and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. In the facts of the above case, the Supreme Court held that offence under Section 363 was not established looking to the conduct of the minor girl.

The learned counsel for the petitioner has further relied on the decision of the Supreme Court in the case of T.D. Vadgama v. State of Gujarat, reported in AIR 1973 Supreme Court 2313, in support of his contention that minor girl, Misa, had left her guardian's home on her own free will and, therefore, the petitioner cannot be held guilty of the offence under Section 363 and 366 of the Indian Penal Code. It must be stated that, in the above decision, the Supreme Court had observed as under:

"If the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party then prima facie it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating an encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him."

These observations of the Supreme Court in the above

decision would not help the petitioner, but, on the contrary, would help the prosecution.

The learned counsel for the petitioner has also relied upon the decision of the Supreme Court in the case of State of Haryana vs. Raja Ram, reported in AIR 1973 Supreme Court 819. I fail to understand as to how this decision would come to the rescue of the petitioner. The Supreme Court has further held in the above decision that:

"Section 361 is designed to protect the sacred right of the guardians with respect to their minor wards. Therefore, the consent of the guardian would alone take the case out of purview of the Section. It is also not necessary that the taking or enticing must be shown to have been by means of force or fraud."

In the present case, the complaint lodged by respondent No.2 clearly shows that minor girl, Misa, was kidnapped by the petitioner without consent of the father, who was lawful guardian.

Decisions of the Supreme Court relied upon by the learned counsel for the petitioner, as stated above, were rendered after full-fledged trial and after appreciation of evidence. In the case on hand, investigation is not yet complete. By the ad-interim order of this Court, investigation has been stayed. Statement made by minor girl, Misa, before the Division Bench of this Court and subsequent statement made before the Commissioner of Police, Ahmedabad, are still required to be investigated. Until the investigation is over, it is difficult to say at this stage that the petitioner, his relatives and bullies are innocent and they have not committed offences under Section 363, 366 and 114 of the Indian Penal Code. Therefore, the decisions relied upon by the learned counsel for the petitioner will not come to the rescue of the petitioner.

The learned counsel for the petitioner has urged that this is a fit case in which this Court should exercise its powers under Article 226 of the Constitution and under Section 482 of the Code and should quash the complaint lodged by respondent No.2, as the complaint lodged by respondent No.2, does not, prima facie, attract the ingredients of section 361 of the Indian Penal Code, and if the complaint is not quashed, it would be a clear abuse of the process of court. It is further submitted by the learned counsel that the said complaint requires to be quashed to secure the ends of justice. In support of the aforesaid submissions, the learned counsel for the

petitioner has relied upon the judgment of the Supreme Court in the case of M/s. Pepsi Foods Limited vs. Special Judicial Magistrate and others, reported in JT 1997 (8) S.C. 705. The Supreme Court, while quashing the complaint and judicial proceedings against the appellant, examined the scope of extraordinary powers under Articles 226 and 227 of the Constitution of India and also the inherent powers under Section 484 of the Code by High Court, and has observed, in paragraph 22, as under:

" It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others vs. Bhajan Lal and others, JT 1990 (4) SC 650 = 1992 Supp (1) SCC 335, this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose of prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."

In the case of M/s. Pepsi Foods Limited (supra), there was no preliminary evidence, on which summons were issued against the appellant and there was no evidence to show as to how it could be said that the appellants are manufacturers of either bottles or beverages or both. In the facts of M/s. Pepsi Foods Limited case (supra), the Supreme Court held that it was a clear case of abuse of the process of court and to secure ends of justice, the process issued against the appellant and the complaint lodged against it, require to be quashed. In the present case, the investigating agency has not completed investigation and the role played by each of the accused has not come on record. It would be hazardous to hold that the complaint lodged by respondent No.2 is baseless and vexatious and, therefore, it requires to be quashed. Therefore, in my opinion, the principle laid down by the Supreme Court in the case of M/s. Pepsi Foods Limited (supra) will not be applicable to the facts of the present case.

The allegations of the complaint are to be considered to find out whether any cognizable offence has been made out. Each case would depend upon the facts of that particular case and no straight-jacket formula can be applied to the facts of the each case. The Supreme Court, in the case of Chand Dhawan (Smt) vs. Jawahar Lal and others, reported in 1992 Supreme Court Cases (Cri) 636, emphasized that powers under Section 482 of the Code to quash complaint and consequent criminal proceedings should not be exercised, wherein, allegations, prima facie, constituting the offence alleged in the complaint are established.

In the case of M/s. Jayant Vitamins Limited vs. Chaitanyakumar, reported in 1992 CRI. L.J. 3450, the Supreme Court has laid down principle, as under:

"The investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation. Thus, where the investigation, which is still on its way and the further investigation in the offence is legally permissible as contemplated by Section 173(i) of the Cr.P.C., the quashing of investigation by the High Court would not be permissible."

In the present case, after lodging of the complaint by respondent No.2, the police agency was, prima facie, of the opinion that the offence of cognizable nature was established and, therefore, the complaint came to be registered at Naranpura Police Station for the offences punishable under Section 363, 366 and 114 of the Indian Penal Code. The investigation into the above offence is not yet completed and it would be hazardous to come to the conclusion, at this premature stage, that the petitioner and his associates have not committed any offence.

In the case of State of West Bengal vs. S.N. Basak, reported in AIR 1963 Supreme Court 447, the Supreme Court laid down the principle as under:

"Section 154 deals with information in cognizable offences and S.156 with investigation into such offences, and under these sections, the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to

investigate cannot be interfered with by the exercise of power under S. 439 or under the inherent power of the Court under S.561A, when there was no case pending at the time excepting that the person against whom the investigation has started had appeared before the court, had surrendered and had been admitted to bail."

The Supreme Court has emphasized since the year 1963 that the extraordinary power under Articles 226 and 227 of the Constitution of India and also the inherent powers under Section 482 of the Code should not be exercised without any compelling and justifiable reason, and the court should be at loathe in interfering with the pending investigation in which the police had taken cognizance.

Coming to the facts of the present case, the complaint lodged by respondent No.2, prima facie, discloses commission of cognizable offence and, therefore, the investigating agency has rightly registered offence punishable under Section 363, 366 and 114 of the Indian Penal Code. The petitioner, with the help of his bullies, had cleverly induced and kidnapped minor girl, Misa, from the lawful guardianship of respondent No.2 and, therefore, ingredients of Section 361, which defines kidnapping, are fully attracted.

Submission of the learned counsel for the petitioner that the minor girl, at the time of hearing of habeas corpus petition, had made voluntary statement that she had left her guardian's home on her free will and without any enticement or threat, is devoid of any merit. The minor girl was in the company of the petitioner for two weeks and they have moved from place to place. Therefore, she was under the influence of the petitioner and the bullies, who had accompanied them upto Kerala State. Statement, which was subsequently made by minor girl, Misa, before the Police Commissioner, Ahmedabad, clearly reveals that she had made the statement before the Division Bench as she was under influence of the petitioner and his relatives and other associates and she was given threat that if she does not make such statement before the High Court, her family members will face dire consequences. From the subsequent statement of minor girl, Misa, it appears that she had made statement before the Court under pressure and threats given by the petitioner, his relatives and associates. As soon as minor girl, Misa, was a free-bird, she had made voluntary statement before the Police Commissioner, Ahmedabad, narrating as to how she was kidnapped by the petitioner and his bullies and how she was kept under pressure during the period of her kidnapping from October 28, 1997

to November 11, 1997, the date on which she was produced before the High Court. Statement made by Misa is yet to be investigated into by the investigating agency, and whether there is truth in it or not is yet to be decided. Therefore, it cannot be said, at this stage, that there was no kidnapping of minor girl, Misa, from the lawful guardianship of respondent No.2. Under these circumstances, the statutory powers of the police in the matter of investigation into cognizable offence cannot be interfered with by the exercise of powers under Articles 226 and 227 of the Constitution of India and also the inherent powers under Section 482 of the Code.

The learned counsel for the petitioner has also relied upon the decision of this Court (Coram: D.G. Karia, J. - as he then was), rendered in Special Criminal Application No.719 of 1995, on October 10, 1997. The facts in the abovereferred decision were that the petitioner in that petition and Urmilaben were residing nearby in the same chawl and had love affairs. Urmilaben was aged 19 years at the time of marriage. Respondent No.2 had lodged complaint for offence punishable under Section 363 of the Indian Penal Code. As the petitioner and Urmilaben were living happily, in the facts of that case, the High Court quashed the criminal proceedings. In my opinion, the decision rendered in Special Criminal Application No.719 of 1995, will not be applicable to the facts of the present case. In the instant case, minor girl, Misa, was aged 17 years and she has, in her statement before the Police Commissioner, categorically stated that she was kidnapped forcibly by petitioner, Tims, and his bullies by deceitful means.

Petitioner, Tims, had tried to enter into the house of respondent No.2 with the help of one Nikhil under the pretext of buying diamond, as the son of respondent No.2 was dealing in the business of diamond. A cheque for Rs.7000/- was given prior to the date of the incident. The petitioner with the help of two others, Mustaq and Anam had tried to bring pressure on respondent No.2 to agree to get the marriage of Misa with the petitioner. When respondent No.2 did not agree, the friends of petitioner Tims, had given threats to respondent No.2 of dire consequences. Thereafter, a show was made by petitioner, Tims, and his friends, by tendering apology for what had happened on the previous day. By some pretext, minor girl, Misa, was persuaded to enter into Maruti Zen Car by telling her that her friend Shanti was sitting in the car, but, in fact, Shanti was not found in the car. The petitioner and his friends have resorted to all tactics to entice and kidnap the

minor girl from the lawful guardianship of respondent No.2, without his consent. Even minor girl Misa was not allowed to contact respondent No.2 while she was in the company of the petitioner. All these circumstances, in my opinion, clearly make out a case of kidnapping under Section 361 of the Indian Penal Code.

Mr. B.M. Mangukia, learned counsel for the petitioners in Criminal Misc. Application No.6666 of 1997, has adopted the arguments of learned counsel, Mr. A.H. Mehta. However, learned counsel Mr. Mangukia has submitted that a vexatious proceeding has been initiated against the petitioners who are father and son. It is further submitted that petitioner No.1, Pragnesh, had only visited the house of respondent No.2 and he was not present, when minor girl, Misa, was kidnapped. It is also submitted that no allegations are made against petitioner No.1 with regard to the taking or enticing the minor girl and, therefore, the proceedings against petitioners Nos.1 and 2 should be dropped. Submissions of learned counsel, Mr. Mangukia, are devoid of any merit. There were two cars used in the commission of the crime. One of the cars, Tata Sumo, belongs to petitioner No.2, namely, Mahendrabhai Virchanddas Patel. Whether the said car was used with the consent of petitioner No.2 by petitioner No.1 is yet to be investigated by the police. It is to be mentioned that in the Habeas Corpus Petition, being Special Criminal Application No.1452 of 1997, petitioner No.2 was impleaded as respondent No.8, and specific averment was made against him that he had also helped petitioner Tims in kidnapping minor girl, Misa. If no involvement of petitioners Nos. 1 and 2 is established, on completion of the investigation, they can file a discharge application before the concerned court. At this stage, it cannot be said that they are not involved in the commission of the offences which are pending investigation with the Naranpura Police Station.

The facts of the present case clearly establish the involvement of petitioner, Tims, who was aided and abetted by his friends and relatives. The petitioner has left no stone unturned in kidnapping minor girl, Misa, from the lawful guardianship of respondent No.2. In my opinion, complaint dated October 28,1997, lodged at the Naranpura Police Station, prima facie, proves that petitioner of Special Criminal Application No.1469 of 1997 and petitioners of Criminal Misc. Application No.6666 of 1997, are involved in the commission of the crime and, therefore, the complaint lodged by respondent No.2 cannot be quashed by this Court in exercise of its powers under Article 226 of the Constitution of India and Section 482 of the Code, more so, when the investigating

agency is exercising its statutory powers of investigation into cognizable offence.

As a result of foregoing discussion, Special Criminal Application No.1469 of 1997 is rejected. Notice is discharged. The ad-interim relief is vacated. Criminal Misc. Application No.6666 of 1997 is summarily rejected.

At this stage, learned counsel, Mr. A.H. Mehta, appearing for the petitioner, has requested this court to extend the ad-interim relief, so as to enable the petitioner to approach the higher forum. In support of his request, he has relied upon the judgment of this Court in the case of Executive Engineer, G.E.B. v. Rohini Oil Mills, reported in 1997 (2) GLR p.1689. Mr. A.H. Mehta, learned counsel, has invited my attention to another decision of this Court in the case of State of Gujarat v. Jayantilal M. Patel, reported in 1995 (2) GLR p.260, and has submitted that Letters Patent Appeal lies against this order and, therefore, the ad-interim relief deserves to be extended for some time. In my opinion, none of the decisions cited by the learned counsel for the petitioner is helpful to the petitioner, as the facts of those cases are quite distinguishable. Time and again, right from the year 1963, the Supreme Court has laid down that the court, in exercise of its powers under Articles 226 and 227 of the Constitution of India and Section 482 of the Code, should not interfere with the functioning of the investigating agency in carrying on investigation into cognizable offence. It must be stated that the complaint was lodged on October 28, 1997 by respondent No.2. Since investigation is stayed by the interim order of this Court from November 13, 1997, progress of investigation is brought to a grinding halt. In the facts and circumstances of the present case, and looking to the seriousness of allegations made in the complaint and the development which took place during the course of investigation, in my opinion, extension of interim relief cannot be granted preventing the investigating agency from carrying on further investigation. It must be noted that investigation is, sufficiently, delayed by the ad-interim relief granted earlier by this Court and it would be further delayed if the ad-interim relief is further extended. Hence, the request of learned counsel, Mr. A.H. Mehta, for the petitioner, Tims, for extension of ad-interim relief, is rejected.

Criminal Misc. Application No.6931 of 1997 is

filed by petitioner, Tims, for a direction to the City Sessions Court, Ahmedabad, to decide the anticipatory bail application, being Criminal Misc. Application No.2621 of 1997, on its merits, without being influenced by the fact that Special Criminal Application No.1469 of 1997 is pending before this Court.

The learned counsel for the petitioner seeks permission to withdraw Criminal Misc. Application No.6931 of 1997. Permission is granted. Criminal Misc. Application No.6931 of 1997 stands disposed of as withdrawn.

In the result, Special Criminal Application No.1469 of 1997 is rejected. Notice is discharged. The ad-interim relief is vacated. Criminal Misc. Application No.6666 of 1997 is summarily rejected. Criminal Misc. Application No.6931 of 1997 stands disposed of as withdrawn.

(swamy)